



FIRE MARSHAL BULLETIN

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Fire Scene Searches

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On January 11, 1984, the United States Supreme Court released its decision in *Michigan v Clifford* (820357). The opinion was to clarify doubt which remained following the Court's 1978 ruling in *Michigan v Tyler*. There are differences in the two cases even though both involve fire scene searches.

Michigan v Clifford

In the early morning hours a fire erupted at the Clifford home. The Cliffords were out of town on a camping trip at the time. The fire was reported to the Detroit Fire Department, and fire units arrived on the scene at about 5:45 a.m. The fire was extinguished and all fire and police personnel left the premises at 7:04 a.m.

At 8 a.m. a fire investigator, with the arson section of the Detroit Fire Department, received instructions to investigate the Clifford fire. He was informed that the fire department suspected arson. Because he had other assignments, the investigator did not proceed immediately to the Clifford residence. He and his partner finally arrived at the scene of the fire at about 1 p.m. on the date of the fire.

When they arrived they found a work crew on the scene. The crew was boarding up the house and pumping some six inches of water out of the basement. The investigator learned that a neighbor had called Clifford and had been instructed to request the Clifford's insurance agent send a work crew out to secure the house. The neighbor also advised that the Cliffords did not plan to return that day. While the investigators waited for the water to be pumped out they observed a Coleman fuel can in the driveway. It was seized and marked as evidence. By 1:30 p.m. the water was pumped out of the basement and the investigators, without obtaining consent or an administrative search warrant, entered the Clifford residence and began their investigation into the cause of the fire. Their search began in the basement. They quickly confirmed that the fire had originated there, beneath the basement stairwell. They detected a strong odor of fuel throughout the basement and found two more Coleman fuel cans beneath the stairway. As they dug through the debris, the investigators also found a crockpot, with attached wires leading to an electrical timer that was plugged into an outlet a few feet away. The timer was set to turn on at approximately 3:45 a.m., and turn back off at approximately 9 a.m. It had stopped somewhere between 4:00 and 4:30 a.m. All these items of evidence was seized and marked.

After determining the fire had originated in the basement, the investigators searched the remainder of the house. The warrantless search was extensive and thorough. The investigators called a photographer to take pictures of the investigation. Inspection of the rooms noted that there were nails on the walls, but no pictures. They found wiring and cassettes for a video tape machine, but no machine. The defendant moved to exclude all exhibits and testimony on the grounds the searches were conducted without a warrant, consent, or exigent circumstances, and therefore were unreasonable under the Fourth and Fourteenth Amendments. The state did not challenge the lack of exigent circumstances, but instead asked the court to exempt the warrant requirement for all administrative investigations for cause and origin of a fire. The court declined to do so. The court restated their position in *Michigan v Tyler*, 436 US 499 (1978) that administrative searches, generally require warrants.

In Tyler, a fire broke out at a furniture store owned by the defendants. At approximately 2 a.m. on January 21, the fire department responded and merely watered down smoldering embers. Two plastic containers were found in the building. The firefighters concluded that the fire could have been the result of an arsonist, and called the police department. A detective responded and took pictures but abandoned his efforts because of the smoke and steam. Everyone left at approximately 4 a.m. The detective returned around 9 a.m., made observations and found evidence which was introduced at trial.

On February 16, 1970, state police investigators went to the scene, took photos, checked circuit breakers, inspected the furnace and examined the remains of several television sets. During this visit, crucial evidence was obtained.

As there was no abandonment or consent from the defendants, the Michigan Supreme Court found that after the firefighters left at 4 a.m., the subsequent reentries violated the Fourth Amendment.

The United States Supreme Court ruled that there is an expectation of privacy even in a burned out shell of a building. To secure a warrant, more must be shown than the bare fact that a fire occurred. Firefighters are charged not only with extinguishing the fire but also with determining its cause. Because it would have been senseless to stay on the scene with the smoke and darkness. The 9 a.m. reentry on January 21 was proper but subsequent reentries were not.

While the U.S. Supreme Court rules that the 9 a.m. reentry in Tyler was a continuation of the investigation of the fire, they refused to allow the 1:30 P.M. reentry as a continuation of the investigation in Clifford. In Tyler, they ruled that officials needed no warrant to remain for a reasonable time to investigate the cause of the blaze after it has been extinguished. However, after the fire has been extinguished, and fire and police officials have left the scene, generally searches must be made pursuant to a warrant, consent, or some new exigency. If the primary object is to determine the cause and origin of a recent fire, an administrative warrant will suffice. If evidence of criminal activity is discovered during the course of a valid administrative search it may be seized under the Plain View Doctrine. This evidence may then be used to establish probable cause to obtain a criminal search warrant. Investigators should be aware, that the scope of an administrative search may be no broader than is reasonably necessary to achieve its end.

In Clifford, there are two separate searches; the delayed search of the basement area, followed by the extensive search of the residential portion of the house. The basement search was not considered to be a continuation of a valid search begun immediately after the fire. This was due to the six and a half hour delay from the time the fire was extinguished and fire and police personnel left the scene, to the time that the arson investigator arrived. The evidence found in the house as to the cause of the fire was invalid because the search was not done under a valid search warrant, consent, or exigent circumstances.

Actual Practice

Fire investigators can inspect to determine origin and cause as long as the search is conducted within a reasonable time after the fire is extinguished. Evidence found during this search would be admitted into evidence under the Plain View Doctrine, however once evidence of arson is found, stop the search and obtain a criminal search warrant.

If fire and police personnel have left the scene, a fire investigator must obtain an administrative warrant to enter and search for the origin and cause. If evidence is discovered under an administrative warrant, it

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can be seized under the Plain View Doctrine. However, once evidence is sufficient to establish probable cause to believe a crime has been committed, the administrative search must be discontinued and a criminal search warrant obtained.

If probable cause of arson exists prior to an origin and cause search of the scene and valid consent can not be obtained, a criminal search warrant shall be sought.

Obtain written consent to search. Consent must be obtained from a person with authority over the premises, for example; the owner, a tenant, lessee, joint occupant. It is the investigator's responsibility to determine who has the authority to give consent to search.

If you have any questions regarding this bulletin, please contact the Fire Marshal Division at (517) 322-1924.

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